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SERVICE DATE – LATE RELEASE JUNE 19, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34871

WYOMING DAKOTA RAILROAD PROPERTIES, INC.—ACQUISITION
AND OPERATION EXEMPTION—DAKOTA, MINNESOTA &
EASTERN RAILROAD CORPORATION

STB Finance Docket No. 34872

DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION AND
CEDAR AMERICAN RAIL HOLDINGS, INC.—INTRA-CORPORATE
FAMILY TRANSACTION EXEMPTION—WYOMING DAKOTA
RAILROAD PROPERTIES, INC.¹

Decided: June 19, 2006

This decision stays the effective dates of the exemptions sought in these proceedings to enable the Board to fully consider the issues raised.

BACKGROUND

These proceedings involve a proposed transfer of the authority the Board granted to Dakota, Minnesota & Eastern Railroad Corporation (DM&E) to construct and operate some 280 miles of rail line² to a newly created DM&E subsidiary, Wyoming, Dakota Railroad Properties, Inc. (WDR).³ WDR claims that utilizing a separate subsidiary to build and operate the new rail line would facilitate financing of the construction project and also insulate DM&E's shareholders from the risks associated with the project.

¹ These proceedings have not been consolidated and are being dealt with here in one decision solely for administrative convenience.

² See Dakota, Minnesota & Eastern RR.—Construction—Powder River Basin, 3 S.T.B. 847 (1998), 6 S.T.B. 8 (2002), and Dakota, Minnesota & Eastern Railroad Corporation Construction into the Powder River Basin, STB Finance Docket No. 33407 (STB served Feb. 15, 2006). The 2006 decision is pending judicial review in Mayo Foundation et al. v. STB, Nos. 06-2031 et al. (8th Cir. filed Apr. 14, 2006).

³ WDR is a subsidiary of one of DM&E's subsidiaries, Cedar American Railroad Holdings, Inc. (CAHR). CAHR currently controls Iowa, Chicago, & Eastern Railroad Corporation, a Class II carrier.

To accomplish the proposed transfer of authority, WDR has filed a verified notice of exemption in STB Finance Docket No. 34871 seeking to acquire the construction and operation authority the Board granted to DM&E in the 2006 decision. Concurrently, DM&E and CAHR jointly filed a verified notice of exemption in STB Finance Docket No. 34872, seeking authority to continue in control of WDR once it becomes a rail carrier.

On June 8, 2006, Mayo Clinic Rochester (Mayo) filed a petition to reject/revoke the use of the class exemption sought in STB Finance Docket No. 34871. Mayo argues, among other things, that the notice of exemption should be rejected based on concerns about the implementation of the environmental mitigation conditions the Board imposed on DM&E in its 2006 decision in STB Finance Docket No. 33407. In particular, Mayo maintains that the instant transaction would raise questions about the responsibility for and enforceability of the environmental conditions the Board imposed with respect to DM&E's existing lines in South Dakota and Minnesota.

On June 15, 2006, the City of Rochester, MN (Rochester) filed a petition to revoke the exemption. Rochester is concerned that the proposed transaction would radically alter the financial fitness analysis the Board conducted when evaluating the DM&E project. It notes that WDR has not demonstrated its financial fitness, and worries that DM&E will not be financially fit to conduct the proposed rehabilitation of its existing line in South Dakota and Minnesota. Accordingly, Rochester asks the Board to revoke the exemption and require WDR to file an application under 49 U.S.C. 10901 to acquire the necessary authority.

On June 19, 2006, Olmsted County, MN (Olmsted County) filed a petition to reject or revoke the exemption sought by WDR in STB Finance Docket No. 34871. Olmsted County raises issues similar to those raised by Mayo and Rochester.

To date, WDR has not replied.

DISCUSSION AND CONCLUSIONS

A housekeeping stay of the effective dates of the exemptions is appropriate to provide sufficient time for the Board to fully consider the issues raised here. Thus, the exemptions will be stayed until further order of the Board.⁴

WDR's proposed acquisition of DM&E's authority raises questions as to the entity that would be responsible for implementing the previously imposed environmental mitigation conditions on DM&E's existing line. Also, the Board's decision that the construction proposal was in the public interest was premised on the fact that construction of the new line would generate the funds needed to completely upgrade

⁴ While the continuance in control exemption sought in STB Finance Docket No. 34872 is not questioned, that exemption will also be stayed because it is integrally related to the exemption sought in STB Finance Docket No. 34871.

DM&E's existing system, thereby ensuring the continuation and improvement of service to existing DM&E shippers. The proposed transaction and possible separation of responsibilities for rehabilitating DM&E's existing line could call into question that rationale. In its reply, WDR should address these matters.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The effective date of the exemptions in these proceedings is stayed until further order of the Board.
2. WDR is directed to file its reply by June 29, 2006.
3. This decision is effective on its date of service.

By the Board, W. Douglas Buttrey, Chairman.

Vernon A. Williams
Secretary